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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 MICHAEL HYATT,

13 Plaintiff,

14 v.

15 CHEEZY FLICKS
16 ENTERTAINMENT, LLC,

17 Defendants.
18
19

CV 15-03541 TJH (AJWx)

Amended
Order Judgment and
Permanent Injunction

20 The Court has considered Plaintiff Michael Hyatt's motion for summary judgment
21 as to damages and other remedies, together with the moving and opposing papers.

22 On May 2, 2016, the Court granted summary judgment in favor of Hyatt, and
23 against Cheezy Flicks Entertainment, LLC ["Cheezy Flicks"], as to liability for Cheezy
24 Flicks' copyright infringement of the film, "The Day of the Triffids" ["the Film"].
25 Hyatt, now, seeks a determination of actual damages, under 17 U.S.C. § 504, in the
26 amount of \$45,494.00.

27 Under § 504(b), Hyatt may recover, *inter alia*, the actual damages suffered by
28 him as a result of the infringement. Hyatt must present proof of Cheezy Flicks' gross

1 revenue, after which Cheezy Flicks must prove its deductible expenses and the elements
2 of profit attributable to factors other than the copyrighted work. *See* 17 U.S.C. §
3 504(b). Here, Hyatt has presented Cheezy Flicks' admission that it sold 13,275 copies
4 of the Film with gross sales totaling \$45,494.00. In its opposition, Cheezy Flicks
5 points to its verified interrogatory response which estimated that it incurred \$13,698.00
6 in expenses, with no further detail. This estimation of expenses lacks a foundation and
7 is, therefore, inadmissible. *See S.E.C. v. Phan*, 500 F.3d 895, 913 (9th Cir. 2007).
8 Accordingly, Hyatt is entitled to recover the gross sales amount of \$45,494.00.

9 Hyatt, also, seeks equitable relief enjoining Cheezy Flicks from continuing to
10 infringe the Film's copyright and impounding Cheezy Films' copies of the Film. Under
11 17 U.S.C. § 502, the Court has the authority to permanently enjoin copyright
12 infringement. The facts of this case support the issuance of a permanent injunction.
13 Similarly, there exists a sufficient factual basis under 17 U.S.C. 503(b) to impound all
14 infringing copies of the Film that are in the possession of Cheezy Flicks and its agents.

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16 Accordingly,

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18 **It is Ordered** that Plaintiff's motion for summary judgment as to damages be,
19 and hereby is, **Granted**.

20
21 **It is Further Ordered, Adjudged and Decreed** that Defendant Cheezy Flicks
22 shall pay to Plaintiff actual damages in the amount of \$45,494.00.

23
24 **It is Further Ordered, Adjudged and Decreed** that Defendant Cheezy
25 Flicks, its officers, directors, agents, servants, licensees, partners, affiliates, successors
26 and assigns, and each of their respective officers, directors, agents, servants,
27 employees, partners, representatives, and all others acting directly or indirectly in
28 concert or participation with Defendant or with any of the foregoing be, and hereby are,

1 **Permanently Enjoined** from:

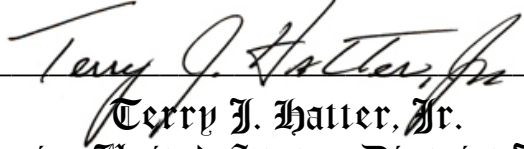
2 1. Infringing any of Plaintiff's exclusive rights to reproduce or distribute
3 copies of the Film in any format and through any distribution channel, including, but
4 not limited to, Defendant's website, through other distributors, and retail stores; and

5 2. Advertising, marketing, selling, offering for sale, licensing, or distributing
6 the Film in any media or format.

7
8 **It is Further Ordered, Adjudged and Decreed** that all copies of the Film,
9 including, but not limited to, DVDs, masters, copies, negatives and tapes, as well as
10 all artwork, packaging, advertising and marketing materials related to the Film in
11 Defendant's possession shall be delivered, forthwith, to Plaintiff's counsel at the
12 following address:

13
14 Michael R. Blaha
15 2530 Wilshire Boulevard, Third Floor
16 Santa Monica, California 90403

17
18 Date: February 7, 2017

19 
20 **Terry J. Hatter, Jr.**
21 **Senior United States District Judge**